

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
at O'clock & min  
JUL 11 2007

In re,

Brenda Lee House-Faust,

Debtor(s).

Brenda Lee House-Faust,

Plaintiff(s),

v.

Herbert Woods, Tiffany Bryant-Woods and  
Rose Patterson,

Defendant(s).

C/A No. 06-02557-~~2007~~  
United States Bankruptcy Court  
Columbia, South Carolina (1)

Adv. Pro. No. 07-80007-JW

Chapter 13

JUDGMENT

**ENTERED**

JUL 11 2007

R. S. S.

Based on the Findings of Fact and Conclusions of Law as recited in the attached  
Order of the Court, Plaintiff is awarded damages in the amount of \$8,600.00 against  
Defendant Herbert Woods.

*John E. Waites*  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
July 11, 2007

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FOR THE DISTRICT OF SOUTH CAROLINA

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United States Bankruptcy Court  
Columbia, South Carolina (11)

In re,

Brenda Lee House-Faust,

C/A No. 06-02557-JW

Adv. Pro. No. 07-80007-JW

Debtor(s).

Brenda Lee House-Faust,

Chapter 13

Plaintiff(s),

**ORDER**

v.

Herbert Woods, Tiffany Bryant-Woods and  
Rose Patterson,

Defendant(s).

JUL 11 2007

**R.S.S.**

This matter comes before the Court upon the Complaint and request for damages filed by Brenda Lee House-Faust ("Plaintiff") against Herbert Woods, Tiffany Bryant-Woods and Rose Patterson (collectively, "the Defendants"). On May 16, 2007, an Entry of Default was entered against the Defendants. The Court entered an Order Granting Default Judgment (the "Default Order") in part against the Defendants on May 21, 2007. In light of the default and Plaintiff's request for unliquidated damages on other causes of action in her Complaint, the Court conducted a hearing on damages. The Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil

Procedure 52, made applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 7052.<sup>1</sup>

### **FINDINGS OF FACT**

1. Plaintiff is the owner of certain real property located at 237 Redwood Court, Columbia, SC 29223 (the "Property"), which is subject to a mortgage originally held by Bank One.

2. In 2005, Plaintiff began to struggle to make the principal and interest payments of \$435.31 on her mortgage and was facing foreclosure of the Property when Defendant Herbert Woods ("Defendant Woods") approached her regarding saving her home from foreclosure.

3. On December 7, 2005, as a result of discussions with Defendant Woods, Plaintiff signed a document entitled, "Agreement for Deed," wherein she purportedly covenanted and agreed to convey the Property to Defendants Rose Patterson and Tiffany Bryant-Woods for the sum of \$1,000.00. The Agreement for Deed was signed by Plaintiff and Defendants Rose Patterson and Tiffany Bryant-Woods and was notarized but not witnessed. The executed Agreement for Deed was recorded on December 15, 2005 in the Office of the Register of Deeds for Richland County in Book 1131 at Page 710. Plaintiff testified that she received \$1,000.00 as a result of this transaction.

4. At the time of the signing of the Agreement for Deed, Plaintiff was being treated for depression and was taking medication. Plaintiff was also suffering from stress caused by marital problems. Plaintiff has suffered from tremors since 1991 as a result of

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<sup>1</sup> To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

a car accident. Since December of 2005, Plaintiff's medical problems have worsened and she has had to seek medical treatment for tremors on several occasions. Plaintiff takes four additional medications as a result of her increased medical problems.

5. After the Agreement for Deed was signed, Defendant Woods told Plaintiff she could either vacate the premises for rental to others or he would lease the property back to her for \$560.00 per month. At some point in time, Defendant Woods also began painting Plaintiff's house but did not complete the work.

6. Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on June 20, 2006.

7. On February 1, 2007, Plaintiff filed a complaint against the Defendants consisting of causes of action for fraud, conversion and quiet title, which arose as a result of the transaction with the Defendants involving the Property.

8. On February 2, 2007, the Clerk of Court issued the Summons.

9. On February 5, 2007, the Plaintiff served Defendants Herbert Woods and Tiffany Bryant-Woods with the Summons and Complaint and filed a Certificate of Service.

10. On April 10, 2007, the Clerk of Court reissued the Summons as to Defendant Rose Patterson.

11. On April 11, 2007, Plaintiff served Defendant Rose Patterson with the Summons and Complaint and filed a Certificate of Service.

12. The Defendants failed to file a responsive pleading to Plaintiff's Complaint.

13. On May 16, 2007, an Entry of Default was made against the Defendants.

14. On May 21, 2007, based upon the admitted allegations of the Complaint, the Court entered an Order Granting Default Judgment (the “Default Order”), which found that “Plaintiff is entitled to be the record and title owner to the real property and the legal and equitable owner in fee simple, and, as such, is entitled to have the title to the real property quieted.” The Default Order declared the Agreement for Deed a nullity and extinguished any claims, right, title or interest of the Defendants to the Property.

15. After notice to the Defendants, on June 7, 2007, the Court held a damages hearing as to the remaining causes of action. Defendants Herbert Woods and Rose Patterson appeared at the courthouse but missed the damages hearing because they appeared in the wrong courtroom. Because of this misunderstanding, the Court continued the damages hearing until June 25, 2007, suggested the Defendants obtain a recording or transcript of the earlier hearing, and allowed them, with the Defendant’s agreement, to file any document challenging the proceeding by June 12, 2007.

16. On June 11, 2007, Defendant Woods filed a motion that sought to set aside the default but did not contest damages. The motion to set aside the default is addressed by separate order.

17. At the continued damages hearing, Defendant Woods testified that the terms in the Agreement for Deed were contradictory to the parties’ actual intentions regarding the Plaintiff’s house.

18. At the damages hearing, Plaintiff testified that she has incurred the following actual damages as a result of Defendant Herbert Woods’ actions: 1) \$462.00 for additional medications; 2) \$200.00 in transportation costs for medical visits, appointments with her attorney and court appearances; 3) \$5,000.00 in attorney’s fees; 4)

\$570.00 in lost wages (10 days at \$57/day); and 5) costs for repainting the exterior of her house. She further requested damages for her emotional distress in the sum of \$25,000.00 and punitive damages. Plaintiff testified that she is only seeking these damages from Defendant Herbert Woods and therefore limited her request for relief.

### **CONCLUSIONS OF LAW**

By virtue of their default, Defendants are deemed to have admitted Plaintiff's well-pled allegations of fact. Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc., 412 F.Supp.2d 560, 564 (D. S.C. 2006). Following the default, the Court must determine whether the unchallenged facts constitute a legitimate cause of action, as a party in default does not admit mere conclusions of law. Id.

Plaintiff's first cause of action is for fraud and is asserted against Defendant Woods only. The Court finds that all of the nine elements of fraud are present and thus the facts alleged in Plaintiff's Complaint are sufficient to set forth the basis for an action in fraud. See Kiriakides v. Atlas Food Sys. & Servs. Inc., 338 S.C. 572, 527 S.E.2d 371 (Ct. App. 2000), modified, 343 S.C. 587, 541 S.E.2d 257 (2001). Defendant Woods' testimony to refute Plaintiff's allegations of fraud was inconsistent and thus lacked credibility. Based on the testimony presented, the Court finds that Defendant Woods made representations that Plaintiff justifiably relied on, which induced Plaintiff to sign the Agreement for Deed. Defendant Woods presented no other evidence to disprove Plaintiff's allegations of fraud. The Court finds that the facts alleged constitute a legitimate cause of action for fraud and thus, by virtue of his default and failure to adequately refute the allegations, Defendant Woods is liable for damages for this cause of action.

In Plaintiff's second cause of action, she alleges Defendants unlawfully converted the Property to their use based on false representations. "Conversion is the unauthorized assumption and exercise of the right of ownership over the goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights.... It is well settled that a conversion action does not lie when alleging the exercise of dominion or control over real property." Hawkins v. City of Greenville, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004). Plaintiff has not alleged that any of the Defendants exercised dominion or control over her personal property. Her allegations only relate to the Defendants' actions with respect to her real property. Accordingly, Plaintiff's cause of action for conversion fails as a matter of law.

Plaintiff's third cause of action to quiet title to the Property has been previously addressed by the Default Order, which found that Plaintiff was entitled to be the record and title owner to the real property and the legal and equitable owner in fee simple, declared that the Agreement for Deed was a nullity<sup>2</sup>, and extinguished the rights of Defendants to the Property. Plaintiff did not request damages in this cause of action.

Having determined that Defendant Woods is liable for fraud, the Court must determine the proper measure of damages to award Plaintiff. Plaintiff first seeks \$462.00 in costs for prescriptions. Plaintiff presented a document entitled, "Part D Explanation of Benefits" from WellCare, which was admitted into evidence as Plaintiff's Exhibit 6 and indicates that \$462.53 was paid for drugs in 2006. The document does not itemize the amounts paid for particular drugs during the year. Plaintiff testified that she was taking two prescription medications prior to December 7, 2006, and as a result of the transaction, she now required four additional prescription medications. Plaintiff also

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<sup>2</sup> Evidence presented at the Damages hearing further indicated that the Agreement for Deed was not valid.

presented medical records from 2006, which indicate that she was prescribed these additional medications. The medical records also indicate that Plaintiff was suffering from stress due to marital problems and the fear of losing her home. Defendant Woods likewise testified that Plaintiff was suffering from stress due to marital problems. The Court finds that Defendant Woods' conduct caused Plaintiff to suffer increased stress and medical problems. However, because the stress suffered by Plaintiff and resulting totality of her medical problems does not appear to have been caused solely by the transaction, the Court finds that a lesser award is appropriate and awards Plaintiff \$250.00 for costs for prescriptions.

Plaintiff next seeks \$200.00 in transportation costs for doctor's visits, meetings with her attorney and appearances in court. Plaintiff testified that she used the bus as her means of transportation. The Court finds that \$200.00 is an unreasonable award for the costs of transportation by bus. Accordingly, the Court finds that a lesser award is appropriate and awards Plaintiff \$100.00 for transportation costs.

Plaintiff requests \$5,000.00 in attorney's fees for prosecuting this action. "The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." Baxter v. Martin Brothers, Inc., 368 S.C. 510, 514, 630 S.E.2d 42, 44 (2006). Neither the Agreement for Deed nor any statute provide for an award of attorney's fees in this case. Accordingly, the Court denies Plaintiff's request for attorney's fees. See Culbertson v. Jno. McCall Coal Co. Inc., 495 F.2d 1403 (4th Cir. 1974)(finding a cause of action for fraud does not justify an award of attorney's fees).

Plaintiff further seeks lost wages in the amount of \$57 per day for missed work. Plaintiff presented ten doctor's excuses indicating days where she was unable to work



because she was under the care of her physician. Because it is not clear that the stress suffered by Plaintiff and resulting in her medical problems was caused solely by the transaction, the Court finds that a lesser award is appropriate and awards Plaintiff \$250.00 for lost wages.

Plaintiff requests an award of damages for the cost of repainting her house. Plaintiff testified that Defendant Woods began painting her house but did not complete the job, which left one-quarter of her house painted green with the remainder painted white. Plaintiff presented photos evidencing the damage done to her house by the partial paint job. Plaintiff also produced two estimates from painting contractors for the cost of repainting the house in the amounts of \$2,000.00 and \$3,000.00, respectively. The Court finds that an award of damages for the cost of repainting Plaintiff's house is appropriate and awards Plaintiff \$2,500.00.

Plaintiff also seeks an award of emotional distress and punitive damages. Plaintiff testified that the transaction at issue has caused her a substantial amount of stress and medical problems as a result of that stress. She testified that she had to make multiple visits to the doctor and to the emergency room for these medical problems. The Court finds that Plaintiff has presented sufficient evidence, by way of medical records, to demonstrate an actual injury and believes that some award for emotional distress is appropriate. Plaintiff's request for \$25,000.00, however, is unreasonable in light of the fact that Plaintiff suffered from other circumstances, such as marital problems, which contributed to her stress. Accordingly, the Court awards Plaintiff \$1,500.00 for emotional distress damages. Further, despite Defendant Woods' testimony that his intention was to assist the Plaintiff, it appears that his efforts were designed to gain for

profit either ownership or equity existing in the Property. Considering all of the evidence and the facts and circumstances of the case, the Court finds that Defendant Woods acted in reckless disregard of Plaintiff's rights and thus an award of \$5,000.00 in punitive damages would be appropriate to deter Defendant Woods and others similarly situated from engaging in similar conduct in the future. See Orangeburg Sausage Co. v. Cincinnati Ins. Co., 316 S.C. 331, 450 S.E.2d 66 (1994), cert. denied, 516 U.S. 928, 116 S.Ct. 331, 133 L.Ed.2d 231 (1995).

For the aforementioned reasons, the Court finds that Plaintiff suffered the following actual damages as a result of Defendant's actions: 1) \$250.00 for additional prescription medications; 2) \$100.00 for transportation expenses; 3) \$250.00 for lost wages; and 4) \$2,500.00 for the cost of repainting the exterior of her house. The Court further finds that Plaintiff suffered \$1,500 in emotional distress damages and awards \$5,000 in punitive damages. In addition, the Court finds that the total amount of damages awarded should be offset by the \$1,000 previously received by Plaintiff from the Defendants as a result of the transaction.

Based on the foregoing, it is therefore

ORDERED that Plaintiff is entitled to a default judgment against Defendant Herbert Woods in the total amount of \$8,600.00.

AND IT IS SO ORDERED.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
July 11, 2007